

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

FURTHER COMMENTS OF AMERIQUEST MORTGAGE COMPANY

Ameriquest Mortgage Company (“Ameriquest”) submits these comments to discuss ways in which the Federal Communications Commission (“FCC” or “this Commission”) can fulfill its statutory obligations under both the Telephone Consumer Protection Act (“TCPA”) and the Do-Not-Call Implementation Act (“DNC Act”). Ameriquest’s comments focus on the FCC’s consideration of local calls and the fact that this Commission *should not* adopt the same rule as the Federal Trade Commission (“FTC”).

As Ameriquest has previously described in great detail, although it is a nation-wide company, its business is derived from local telephone calls made by loan officers to establish and begin a two-way communication with potential customers. What really makes these calls inherently local is the fact that the ultimate sales are – and indeed are required by law to be – closed in a face-to-face transaction. The FTC did not recognize that these types of calls fundamentally differ from other types of calls because they simply are not intrusive. In enacting the TCPA, however, Congress did recognize the difference. So too must this Commission.

Only the FCC can properly craft a national rule that provides needed consistency for consumers and users of the telephone. The DNC Act contemplates and encourages the FCC to evaluate carefully the TCPA’s enumerated considerations such as the proper treatment of local calls.

DISCUSSION

Although the FTC considered whether to exempt calls that lead to a face-to-face transaction, it opted to subject such calls to its DNC list. This “decision” is a moot point for most businesses that use the telephone for face-to-face transactions because the FTC’s DNC list will only reach interstate telephone calls. Many local calls are, not surprisingly, intrastate and beyond the scope of the FTC’s list.¹

There is another problem with the FTC’s ability to regulate local calls. As the House Committee on Energy and Commerce recognized, the FTC cannot create a single national list without the voluntary cooperation of the states. The Committee noted that “many states have unique laws with protections for local industries or exemptions for certain products.” H.R. Rep. No. 108-8 at 4 (2003). The report then urges the FTC “to work diligently to persuade states to adopt the FTC’s rule.” *Id.*

A simpler approach is for the FCC to create one single national list that creates a *uniform* rule for local face-to-face calls. Simply put, the FCC does not need to “work diligently to persuade” the states to adopt its rule. Rather, any list that the FCC creates can subsume various state laws. *See* 47 U.S.C. § 227(e)(2). A number of states have recognized the value and less intrusive nature of face-to-face calls. As of May 5, 2003, some 33 states have in place or have passed legislation creating a state-wide DNC list. Of those states, ten have chosen to exempt face-to-face calls (30%).² Furthermore, the more recent states to add DNC lists have chosen to

¹ On the other hand, there are some face-to-face local calls that *do* cross state lines. The Washington-Virginia-Maryland area being but one prominent example. Because the FTC did not provide an exemption for local calls, it has created an absurd result: a resident of Fairfax, Virginia will receive calls from businesses located in the far corners of the Commonwealth but not calls from a business located a few minutes away in Montgomery County, Maryland. The FTC’s failure to consider this absurd result demonstrates the need for the FCC to create a consistent rule that takes into account the needs of local businesses.

² Other states have included a limited face-to-face exemption for certain types of industries (such as real estate transaction) and other states have exemption that may be construed to provide a face-to-face exemption.

include an exemption for face-to-face calls. For example, North Dakota and Mississippi, which enacted DNC laws in April, 2003, both included face-to-face exemptions in their laws.³ Because the FCC's rules will apply to intrastate calls, it should respect these exemptions and indeed adopt a uniform treatment of local calls.

As Ameriquest has explained in great detail in its comments and reply comments, the TCPA requires the FCC to consider how local calls should be treated. 47 U.S.C. § 227(c)(1)(C); *see also* 137 Cong. Rec. S16,204 (daily ed. Nov. 7, 1991) (colloquy between Sens. Gore and Pressler) (explaining that a national photographer would be the type of business that should be considered in the local call provision). Nothing in the DNC Act changes this obligation. As the Committee Report for the DNC Act makes clear, "because the FCC is bound by the TCPA, it is impossible for the FCC to adopt rules identical to the FTC's TSR." H.R. Rep. No. 108-8 at 4 (2003). It goes on to explain that the "Committee further recognizes that the TCPA requires the FCC to consider a variety of factors in structuring a national do-not-call list. It is not the Committee's intent to foreclose consideration of those factors by enacting this legislation." *Id.* at 9. Thus, there is nothing in the DNC Act that precludes the FCC from considering local call as the TCPA requires. In fact, the legislative history makes clear that the FCC *must* follow the TCPA's requirements as it crafts a national DNC list.

Thus, although the DNC Act requires the FCC to "maximize consistency" with the FTC's rule, the DNC Act recognizes that there are areas where the FCC must create its own rules. The uniform local treatment of local calls is one example where the FCC must reach its own independent conclusions because the FTC's list does not and cannot reach such calls. Only this Commission has the ability to create a single national list with uniform exemptions. This will

³ Other recently enacted state-wide DNC lists with face-to-face exemptions include South Dakota, Massachusetts, and Minnesota.

lead to less confusion for consumers and less burden on businesses that utilize the telephone to solicit business. Ameriquest has previously explained why this uniform treatment should exempt local calls from a national DNC list and instead subject them to the company-specific regime.

Respectfully submitted,

Ameriquest Mortgage Company

Erik V. Huey
Ronald M. Jacobs
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, NW, Suite 1000
Washington, DC 20005
(202) 513-4655

Thomas J. Noto
General Counsel
Ameriquest Mortgage Company
1100 Town & Country Road, Suite 1100
Orange, CA 92686
(714) 564-0600

Clayton S. Friedman
Baker & McKenzie
One Prudential Plaza
130 East Randolph Drive
Chicago, IL 60601
(312) 861-2927

Attorneys for Ameriquest Mortgage Company

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